

REMARKS**Outstanding Claim Rejections**

The present Office Action (Paper No. 8) bears no mention of the previous claim rejections, originally set out in the Office Action mailed on August 19, 2002, which the Applicants responded to on December 16, 2002. Accordingly, the Applicants are currently operating under the understanding that such rejections have been withdrawn. The Applicants note this with appreciation.

Species Election

The Office has indicated that claim 9 is generic. Therefore, the Applicants note that upon indication that the generic claim is allowable, the nonelected species that incorporate all of the limitations of the generic claim will also be held allowable. *See* 37 C.F.R. § 1.141, MPEP §§ 806.4(d), and 809.02(a). In light of the present Markush claim structure, if the species election requirement is upheld, and no art references are found to anticipate or render obvious the elected species, the search will be extended to nonelected species. *See* MPEP § 803.02. If the designated generic claim is determined to be allowable, the Applicants are entitled to a reasonable number of species encompassed by this claim. *See* MPEP § 809.02(b).

The Applicants traverse on the basis that the asserted species groups are encompassed in proper Markush claim groupings. In particular, the members of the present Markush Groups are sufficiently few that a serious burden does not appear to be present for search purposes. *See* MPEP § 803.02.

Applicant expressly reserves the right under 35 U.S.C. § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of

Application No.: 10/020,627

Docket No.: 313632000501

such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 313632000501. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: June 18, 2003

Respectfully submitted,



David L. Devernoe
Registration No.: 50,128
MORRISON & FOERSTER LLP
3811 Valley Centre
Suite 500
San Diego, California 92130
(858) 720-7943